

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today
(1) was not written for publication in a law journal and
(2) is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROGER E. EANDI

Appeal No. 98-0197
Application 08/417,362¹

ON BRIEF

Before FRANKFORT, PATE and CRAWFORD, *Administrative Patent Judges*.

PATE, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1
through 4. Claims 5 through 7, the other remaining claims in

¹ Application for patent filed April 5, 1995.

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the application, stand as nonelected and withdrawn from consideration.

The claimed invention is directed to a plug washer that is used with a support plate and a stud to reinforce a wall.

The claimed invention is further illustrated by reference to claim 1, reproduced below.

1. A plug washer for use with a stud embedded in a vertical wall for attachment to a vertical metal support standing adjacent to said wall, said stud to extend from said wall at an angle oblique to horizontal and through said metal support comprising,

a washer portion having a support-bearing surface and a nut-bearing surface, said support-bearing surface and said nut-bearing surface diverging at said oblique angle,

a cylindrical plug portion having a smaller diameter than said washer portion and extending from said support-bearing surface with its axis perpendicular to said support-bearing surface,

a passageway to receive said stud extending through said washer portion and said plug portion with the axis of said passageway perpendicular to said nut-bearing surface.

The references of record relied upon as evidence of obviousness are:

Williams	3,311,012	Mar. 28, 1967
Hipkins	5,147,151	Sep. 15, 1992

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Claim 4 stands rejected under 35 U.S.C. § 112, second paragraph, as indefinite. The examiner is of the view that there is an inconsistency in the language of the preamble and certain portions of the body of claim 1 when considered with the recited subject matter of claim 4.

Claims 1 through 4 are rejected under 35 U.S.C. § 103 as unpatentable over the combined teachings of Williams and Hipkins.

The examiner is of the view that it would have been obvious to include the cylindrical plug portion of Hipkins onto the support bearing portion of Williams in order to obstruct any grout from contacting the outside surface of the support plate. Alternatively, the examiner is of the view that it would have been obvious to attach the washer portion of Williams to the cylindrical plug portion of Hipkins with the support bearing surface and nut bearing surface diverging at an oblique angle in order to have uniform stresses along the nut bearing surface. See examiner's answer, pages 5 and 6.

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According to the appellant on page 4 of the brief, the claims stand or fall together.

OPINION

We have carefully reviewed the rejections on appeal in light of the arguments of the appellant and the examiner. As a result of this review, we have determined that the subject matter of claims 4 is not indefinite within the purview of 35 U.S.C.

§ 112, second paragraph. We have further determined that the

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applied prior art does not establish the *prima facie* obviousness of the subject matter of claims 1 through 4. Therefore, the rejections made by the examiner are reversed.

Turning first to the rejection of claim 4 under 35 U.S.C. § 112, second paragraph, it is our view that claim 4 does not raise an issue of whether a subcombination plug washer is claimed, or whether a combination of a plug washer and support plate are claimed, as the examiner suggests. A careful reading of claim 4 establishes that claim 4 only references the support plate to set out the thickness of the plug portion of the plug washer being claimed in claim 1. Therefore, the reference to the support plate in claim 4 is merely a permissible reference to establish the dimensions of the plug portion of the claimed subject matter. In our view, claim 4 does not raise the issue of a combination invention. Therefore, the rejection of claim 4 under 35 U.S.C. § 112, second paragraph, is reversed.

Turning to the rejection of claims 1 through 4 under 35 U.S.C. § 103, we note that the examiner has included two rejections, one denominated as over Williams in view of

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Hipkins, and one denominated as over Hipkins in view of
Williams. However, as our reviewing court makes clear, a 35
U.S.C. § 103

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rejection is based on the combined teachings of the applied references, and the order in which the references are recited is of little moment. See *In re Bush*, 296 F.2d 491, 496, 131 USPQ 263, 267 (CCPA 1961).

Turning to a consideration of claim 1 on appeal, we note that the ultimate limitation of the claim calls for a passageway extending through the washer portion and the plug portion with the axis of the passageway perpendicular to the nut-bearing surface. Since the nut-bearing surface and the support-bearing surface diverge at an oblique angle, the passageway and the cylindrical plug portion must be at a complementary angle to the oblique angle of divergence. Neither reference applied teaches a plug portion with a passageway skewed with respect to the plug portion axis. Therefore, assuming for a moment, that it would have been obvious to provide the plug portion of Hipkins on the beveled washer of Williams, no reference teaches that the stud passageway in such a plug portion would be any more than axial. It is noted that Hipkins does not clearly show that his passageway is skewed even after the washer insert has been

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distorted by tightening of the roof bolt. Since no reference teaches a passageway that extends through a plug portion on a skewed axis, the rejection of claims 1 through 4 under 35 U.S.C. § 103 must be reversed.

SUMMARY

The rejection of claim 4 under 35 U.S.C. § 112, second paragraph, has been reversed.

The rejection of claim 1 through 4 under 35 U.S.C. § 103 has been reversed.

REVERSED

CHARLES E. FRANKFORT)	
Administrative Patent Judge)	
)	
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WILLIAM F. PATE, III)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND

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) INTERFERENCES
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